

(iv) The cash commodity transaction and position information required to be maintained pursuant to §18.05 of this chapter as specified in the call which relates to futures or options positions of the trader in the United States.

(f) If the Commission has reason to believe that a futures commission merchant or customer has not responded as required to a call made pursuant to this section, the Commission in writing may inform the contract market specified in the call and that contract market shall prohibit the execution of, and no futures commission merchant, introducing broker, or foreign broker shall accept an order for, trades on the contract market and in the months or expiration dates specified in the call for or on behalf of the futures commission merchant or customer named in the call, unless such trades offset existing open contracts of such futures commission merchant or customer.

(g) Any futures commission merchant or customer named in a special call that believes he or she is or may be adversely affected or aggrieved by action taken by the Commission under paragraph (f) shall have the opportunity for a prompt hearing after the Commission acts. That person may immediately present in writing to the Commission for its consideration any comments or arguments concerning the Commission's action and may present for Commission consideration any documentary or other evidence that person deems appropriate. Upon request, the Commission may, in its discretion, determine that an oral hearing be conducted to permit the further presentation of information and views concerning any matters by any or all such persons. The oral hearing may be held before the Commission or any person designated by the Commission, which person shall cause all evidence to be reduced to writing and forthwith transmit the same and a recommended decision to the Commission. The Commission's directive under paragraph (f) of this section shall remain in effect unless and until modified or withdrawn by the Commission.

(h) If, during the course of or after the Commission acts pursuant to paragraph (f), the Commission determines that it is appropriate to undertake a

proceeding pursuant to section 6(c) of the Commodity Exchange Act, 7 U.S.C. 9 and 15, the Commission shall issue a complaint in accordance with the requirements of section 6(c), and, upon further determination by the Commission that the conditions described in §21.03(c) still exist, a hearing pursuant to section 6(c) of the Act shall commence no later than five business days after service of the complaint. In the event the futures commission merchant or customer served with the complaint under section 6(c) has, prior to the commencement of the section 6(c) hearing, sought a hearing pursuant to paragraph (g) above and the Commission has determined to accord him such a hearing, the two hearings shall be conducted simultaneously. Nothing in this section shall preclude the Commission from taking other appropriate action under the Commodity Exchange Act or the Commission's Rules, including action under section 6(c) of the Act, regardless of whether the conditions described in §21.03(c) still exist, and no ruling issued in the course of a hearing pursuant to paragraph (g) or this paragraph shall constitute an estoppel against the Commission in any other action.

(Approved by the Office of Management and Budget under control number 3038-0009)

[46 FR 63036, Dec. 30, 1981, and 47 FR 45001, Oct. 13, 1982, as amended at 48 FR 35301, Aug. 3, 1983; 59 FR 5702, Feb. 8, 1994]

## PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

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## Commodity Futures Trading Commission

## § 30.4

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AUTHORITY: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

SOURCE: 52 FR 28998, Aug. 5, 1987, unless otherwise noted.

### § 30.1 Definitions.

For the purposes of this part:

(a) *Foreign futures* means any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade.

(b) *Foreign option* means any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty” or “decline guaranty”, made or to be made on or subject to the rules of any foreign board of trade.

(c) *Foreign futures or foreign options customer* means any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: *Provided*, That an owner or holder of a proprietary account as defined in paragraph (y) of § 1.3 of this chapter shall not be deemed to be a foreign futures or foreign options customer within the meaning of §§ 30.6 and 30.7 of this part.

### § 30.2 Applicability of the Act and rules.

(a) Except as specified in this part or unless the context otherwise requires, the provisions of sections 1a, 2, 4, 4c, 4f, 4g, 4k, 4l, 4m, 4n, 4o, 4p, 6, 6c, 8, 8a, 9, 12, 13, and 14 of the Act and parts 1, 3, 4, 10, 11, 12, 13, 14, 21, 155, 166 and 190 of this chapter shall apply to the persons and transactions that are subject to the requirements of this part as though they were set forth herein and included specific references to foreign board of trade, foreign futures, foreign options, foreign futures and foreign options customers, and foreign futures and foreign options secured amount, as appropriate.

(b) The provisions of §§ 1.20 through 1.30, 1.32, 1.35(a) (2)–(4) and (c)–(i), 1.36(b), 1.38, 1.39, 1.40 through 1.51, 1.53, 1.54, 1.55, 1.58, 1.59, 33.2 through 33.6 and parts 15 through 20 of this chapter shall not be applicable to the persons and transactions that are subject to the requirements of this part.

[52 FR 28998, Aug. 5, 1987, as amended at 59 FR 5703, Feb. 8, 1994]

### § 30.3 Prohibited transactions.

(a) It shall be unlawful for any person to engage in the offer and sale of any foreign futures contract or foreign options transaction for or on behalf of a foreign futures or foreign options customer, except in accordance with the provisions of this part: *Provided*, that, with the exception of the disclosure and antifraud provisions set forth in §§ 30.6 and 30.9 of this part, the provisions of this part shall not apply to transactions executed on a foreign board of trade, and carried for or on behalf of a customer at a designated contract market, subject to an agreement with and rules of a contract market which permit positions in a commodity interest which have been established on one market to be liquidated on another market.

(b) Except as otherwise provided in § 30.4 of this part or pursuant to an exemption granted under § 30.10 of this part, it shall be unlawful for any person to engage in the offer and sale of any foreign futures contract or foreign option transaction for or on behalf of any foreign futures or foreign options customer other than by or through a futures commission merchant on a fully-disclosed basis.

[52 FR 28998, Aug. 5, 1987, as amended at 61 FR 10895, Mar. 18, 1996]

### § 30.4 Registration required.

Except as provided in § 30.5 of this part, it shall be unlawful for any person, with respect to a foreign futures or foreign options customer:

(a) To solicit or accept orders for or involving any foreign futures contract or foreign options transaction and, in connection therewith, to accept any money, securities or property (or extend credit in lieu thereof) to margin,

guarantee or secure any trades or contracts that result or may result therefrom unless such person shall have registered, under the Act, with the Commission as a futures commission merchant and such registration shall not have expired nor been suspended nor revoked;

(b) Except an individual who elects to be and is registered as an associated person of a futures commission merchant, to solicit or accept orders for or involving any foreign futures contract or foreign options transaction, and who in connection therewith, does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trade or contracts that result or may result therefrom, unless such person shall have registered, under the Act, with the Commission as an introducing broker and such registration shall not have expired nor been suspended nor revoked;

(c) To engage in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and, in connection therewith, to solicit, accept, or receive funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading, directly or indirectly, in any foreign futures contract or foreign options transaction unless such person shall have registered, under the Act, with the Commission as a commodity pool operator and such registration shall not have expired nor been suspended nor revoked: *Provided, however,* That the registration requirement set forth in this paragraph shall not apply to any investment trust, syndicate, or similar form of enterprise located outside the United States, its territories or possessions which is registered as an investment company under the Investment Company Act of 1940 and whose securities are registered in accordance with the Securities Act of 1933, or which is otherwise exempt from such registration requirements: *And, provided further,* That no more than 10% of the participants in, and the value of the assets of, such investment trust, syndicate or similar form of enterprise located outside the United States, its

territories or possessions, are held by or on behalf of foreign futures and foreign options customers.

(d) To solicit or enter into an agreement to direct, or to guide such customer's account by means of a systematic program that recommends specific transactions in any foreign option or foreign futures contract unless such person shall have registered, under the Act, with the Commission as a commodity trading advisor and such registration shall not have expired nor been suspended nor revoked: *Provided,* That the term "commodity trading advisor" does not include

(1) Any bank or trust company or any person acting as an employee thereof,

(2) Any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant, or teacher,

(3) The publisher or producer of any print or electronic data of general and regular dissemination, including its employees,

(4) The named fiduciary, or trustee, of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974, or any fiduciary whose sole business is to advise that plan,

(5) Any foreign board of trade or clearing organization of such board of trade,

(6) An insurance company subject to regulation by any State, or any wholly-owned subsidiary or employee thereof, and

(7) Such other persons not within the intent of the term "commodity trading advisor" as the Commission may specify by rule, regulation, or order:

*And, provided further,* That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession. Registration as a commodity trading advisor shall not be required if such person is registered with the Commission as a futures commission merchant, introducing broker, commodity pool operator or associated person, or is otherwise exempt from registration pursuant to § 30.5.

(e) Any person required to be registered as a futures commission merchant under this section must maintain an office in the United States

which is managed by an individual domiciled in the United States and registered with the Commission as an associated person.

**§ 30.5 Alternative procedures for non-domestic persons.**

Any person not located in the United States, its territories or possessions, who is required in accordance with the provisions of this part to be registered with the Commission, other than a person required to be registered as a futures commission merchant, may apply for an exemption from registration under this part by filing a petition for exemption with the National Futures Association and designating an agent for service of process, as specified below. A person who receives confirmation of an exemption pursuant to this section must engage in all transactions subject to regulation under Part 30 through a registered futures commission merchant or a foreign broker who has received confirmation of an exemption pursuant to § 30.10 in accordance with the provisions of § 30.3(b).

(a) *Agent for service of process.* Any person who seeks exemption from registration under this part shall enter into a written agency agreement with the futures commission merchant located in the United States through which business is done, with any registered futures association or any other person located in the United States in the business of providing services as an agent for service of process, pursuant to which agreement such futures commission merchant or other person is authorized to serve as the agent of such person for purposes of accepting delivery and service of communications issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer. If the written agency agreement is entered into with any person other than the futures commission merchant through which business is done, the futures commission merchant or foreign broker who has received confirmation of an exemption pursuant to § 30.10 with whom business is conducted must be expressly identified in such agency agreement. Service or delivery of any communication issued by or on behalf

of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer, pursuant to such agreement, shall constitute valid and effective service or delivery upon such person. Unless otherwise specified by the Commission, the agreement required by this section shall be filed with the Vice President-Registration, National Futures Association, 200 West Madison Street, Chicago, Illinois 60606, with a copy to the Vice President-Compliance, National Futures Association. For the purposes of this section, the term "communication" includes any summons, complaint, order, subpoena, request for information, or notice, as well as any other written document or correspondence relating to any activities of such person subject to regulation under this part.

(b) *Termination of agreement.* Whenever the agreement referred to in paragraph (a) of this section is terminated or is otherwise no longer in effect, the futures commission merchant or any other person which is party to the agreement shall immediately notify the Vice President-Compliance of the National Futures Association and the futures commission merchant through which business is done, as appropriate. Upon notice, a futures commission merchant shall not accept from the person that has entered into such agreement any order, other than liquidating order(s), for, or on behalf of a foreign futures or foreign options customer. Notwithstanding the termination of the agreement referred to in paragraph (a) of this section, service or delivery of any communication issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer pursuant to the agreement shall nonetheless constitute valid and effective service or delivery upon such person with respect to any transaction entered into on or before the date of the termination of the agreement.

(c) *Applicability of other rules.* Any person who is located outside of the United States, its territories or possessions, and who, in accordance with the provisions of paragraph (a) of this section, is exempt from registration as an

introducing broker, commodity pool operator or commodity trading advisor under this part, shall nonetheless comply with the provisions of §30.6 of this part and §§1.37 and 1.57 of this chapter as if registered in such capacity.

(d) *Access to records.* Any person exempt from registration with the Commission in accordance with the provisions of paragraph (a) of this section must, upon the request of any representative of the Commission or U.S. Department of Justice, provide such records as such person is required to maintain under this part as requested at the place in the United States designated by the representative within 72 hours after the person receives the request.

(e) *Petition for exemption.* Any person seeking an exemption from registration as an introducing broker, commodity pool operator or commodity trading advisor under this section must file a petition for exemption, which will be granted or denied based on compliance with §30.5(a) and the provision of this paragraph. The petition must:

- (1) Be in writing;
- (2) Provide the name, main business address and main business telephone number of the petitioner;
- (3) Represent that:
  - (i) The petitioner is located outside of the United States, its territories or possessions;
  - (ii) The petitioner does not act as an introducing broker, commodity pool operator or commodity trading advisor, respectively, in connection with trading on or subject to the rules of a designated contract market in the United States by, for, on behalf of, or for the benefit of any U.S. customer, client or pool; and
  - (iii) The petitioner irrevocably agrees to the jurisdiction of the Commission and state and federal courts in the United States with respect to activities and transactions subject to this part;
- (4) Represent that the petitioner would not be statutorily disqualified from registration under Section 8a(2) or 8a(3) of the Commodity Exchange Act and that the petitioner is not disqualified from registration pursuant to the laws or regulations of its home country;

(5) If the petitioner or its activities are regulated by any government entity or self-regulatory organization, state the name and address of such government entity or self-regulatory organization;

(6) State whether the petitioner is applying for a §30.5 exemption from registration as an introducing broker, commodity pool operator or commodity trading advisor;

(7) Be signed as follows: If the petitioner is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; if a corporation, by the chief executive officer or other person(s) legally authorized to bind the corporation; if any other business structure, by such person or persons involved in the management of the petitioner and legally authorized to bind the petitioner; and

(8) Be filed with the Vice President-Registration, National Futures Association, 200 West Madison Street, Chicago, Illinois 60606.

[52 FR 28998, Aug. 5, 1987, as amended at 64 FR 28914, May 28, 1999]

#### §30.6 Disclosure.

(a) *Future commission merchants and introducing brokers.* Except as provided in §1.65 of this chapter, no futures commission merchant, or in the case of an introduced account no introducing broker, may open a foreign futures or option account for a foreign futures or option customer, other than for a customer specified in §1.55(f) of this chapter, unless the futures commission merchant or introducing broker first furnishes the customer with a separate written disclosure statement containing only the language set forth in §1.55(b) of this chapter or as otherwise approved under §155(c) of this chapter (except for nonsubstantive additions such as captions), which has been acknowledged in accordance with §1.55 of this chapter: *Provided, however,* that the risk disclosure statement may be attached to other documents as the cover page or the first page of such documents and as the only material on such page.

(b) *Commodity pool operators and commodity trading advisors.* (1) With respect to qualified eligible participants, as defined in §4.7(a)(1)(ii) of this chapter, a

commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to §30.5, may not, directly or indirectly, engage in any of the activities described in §30.4(c) unless the commodity pool operator, at or before the time it engages in such activities, first provides each prospective qualified eligible participant with the Risk Disclosure Statement set forth in §4.24.(b)(2) of this chapter and the statement in §4.7(a)(2)(i)(A) of this chapter. With respect to qualified eligible clients, as defined in §4.7(b)(1)(ii) of this chapter, a commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to §30.5, may not, directly or indirectly, engage in any of the activities described in §30.4(d) unless the commodity trading advisor, at or before the time it engages in such activities, first provides each qualified eligible client with the Risk Disclosure Statement set forth in §4.34(b)(2) of this chapter and the statement in §4.7(b)(2)(i)(A) of this chapter.

(2) With respect to participants who do not satisfy the requirements of qualified eligible participants, as defined in §4.7(a)(1)(ii) of this chapter, a commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to §30.5, may not, directly or indirectly, engage in any of the activities described in §30.4(c) unless the commodity pool operator, at or before the time it engages in such activities, first provides each prospective participant with the Disclosure Document required to be furnished to customers or potential customers pursuant to §4.21 of this chapter and files the Disclosure Document in accordance with §4.26 of this chapter. With respect to clients who do not satisfy the requirements of qualified eligible clients, as defined in §4.7(b)(1)(ii) of this chapter, a commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to §30.5, may not, directly or indirectly, engage in any of the activities described in §30.4(d) unless the commodity trading advisor, at or before the time it engages in such activities, first provides each prospective client

with the Disclosure Document required to be furnished customers or potential customers pursuant to §4.31 of this chapter and files the Disclosure Document in accordance with §4.36 of this chapter.

(c) The acknowledgment required by paragraphs (a) and (b) of this section must be retained by the futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor in accordance with §1.31 of this chapter.

(d) This section does not relieve a futures commission merchant or introducing broker from its obligations under §33.7 of this chapter: *Provided, however,* That a new disclosure statement is not required to be furnished if the futures commission merchant or introducing broker has previously delivered such statement to the foreign options customer in connection with the opening of a commodity option account under part 33 of this chapter.

(e) This section does not relieve a futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor from any other disclosure obligation it may have under applicable law or regulation.

[52 FR 28998, Aug. 5, 1987, as amended at 58 FR 17505, Apr. 5, 1993; 60 FR 38193, July 25, 1995; 63 FR 8571, Feb. 20, 1998; 64 FR 28914, May 28, 1999]

#### **§ 30.7 Treatment of foreign futures or foreign options secured amount.**

(a) Except as provided in this section, a futures commission merchant must maintain in a separate account or accounts money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to foreign futures or foreign options customers denominated as the foreign futures or foreign options secured amount. Such money, securities and property may not be commingled with the money, securities or property of such futures commission merchant, with any proprietary account of such futures commission merchant, or used to secure or guarantee the obligations of, or extend credit to, such futures commission merchant or any proprietary account of such futures commission merchant.

(b) A futures commission merchant may deposit together with the secured amount required to be on deposit in the separate account or accounts referred to in paragraph (a) of this section money, securities or property held for or on behalf of other customers of the futures commission merchant for the purpose of entering into foreign futures or foreign options transactions. In such a case, the amount that must be deposited in such separate account or accounts must be no less than the greater of (1) the foreign futures and foreign options secured amount plus the amount that would be required to be on deposit if all such customers were foreign futures or foreign options customers under this part 30, or (2) the foreign futures or foreign options secured amount plus the amount required to be held in a separate account or accounts for or on behalf of customers pursuant to any law, or rule, regulation or order thereunder, or any rule of any self-regulatory organization authorized thereunder, in the jurisdiction in which the depository or the customer, as appropriate, is located.

(c) The separate account or accounts referred to in paragraph (a) of this section must be maintained under an account name that clearly identifies them as such, with any of the following depositories:

- (1) A bank or trust company located in the United States or as designated;
- (2) Another person registered as a futures commission merchant;
- (3) The clearing organization of any foreign board of trade;
- (4) Any member of such board of trade; or

(5) Such member or clearing organization's designated depositories. Each futures commission merchant must obtain and retain in its files for the period provided in §1.31 of this chapter an acknowledgment from such depository that it was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provisions of these regulations.

(d) In no event may money, securities or property representing the foreign futures or foreign options secured amount be held or commingled and de-

posited with customer funds in the same account or accounts required to be separately accounted for and segregated pursuant to section 4d of the Act and the regulations thereunder.

(e) Each futures commission merchant which invests money, securities or property on behalf of foreign futures or foreign options customers shall keep a record showing the following:

- (1) The date on which such investments were made;
- (2) The name of the person through whom such investments were made;
- (3) The amount of money so invested;
- (4) A description of the obligations in which such investments were made;
- (5) The identity of the depositories or other places where such obligations are maintained;
- (6) The date on which such investments were liquidated or otherwise disposed of and the amount of money received of such disposition, if any; and
- (7) The name of the person to or through whom such investments were disposed of.

(f) Each futures commission merchant must compute as of the close of each business day:

- (1) The total amount of money, securities and property on deposit in separate account(s) in accordance with this section;
- (2) The total amount of money, securities and property required to be on deposit in separate account(s) in accordance with this section; and
- (3) The amount of the futures commission merchant's residual interest in money, securities and property on deposit in separate account(s) in accordance with this section. Such computations must be completed prior to noon on the next business day and must be kept, together with all supporting data, in accordance with the requirements of §1.31.

**§ 30.8 Quarterly reporting requirements.**

(a) Each futures commission merchant required to be registered under this part shall file written quarterly reports on a form specified by the National Futures Association at the National Futures Association's headquarters office in Chicago, Illinois, by the tenth business day of the month

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following the quarter covered by the reports.

(b) Each report shall contain the following information separately for each foreign board of trade on which foreign futures contracts or foreign options transactions were effected:

(1) The total number of foreign futures contracts, separately by contract, long and short, customer or proprietary, executed during the quarter on such board of trade on behalf of the futures commission merchant or its foreign futures customers;

(2) The total number of foreign futures contracts, separately by contract, long and short, customer or proprietary, open on such board of trade on behalf of the futures commission merchant or its foreign futures customers as of the close of business on the last business day of the quarter;

(3) The total number of foreign options, separately by underlying futures contracts for options on futures contracts or by underlying physical for options on physicals, by put, by call, and by customer or proprietary, executed during the quarter on such board of trade on behalf of the futures commission merchant or its foreign options customers;

(4) The total number of foreign options, separately by underlying futures contracts for options on futures contracts or by underlying physical for options on physicals, by put, by call, and by customer or proprietary, open on such board of trade on behalf of the futures commission merchant or its foreign options customers as of the close of business on the last business day of the quarter.

### § 30.9 Fraudulent transactions prohibited.

It shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any account, agreement or transaction involving any foreign futures contract or foreign options transaction:

(a) To cheat or defraud or attempt to cheat or defraud any other person;

(b) To make or cause to be made to any other person any false report or

statement thereof or to enter or cause to be entered for any person any false record thereof;

(c) To deceive or attempt to deceive any other person by any means whatsoever in regard to any such account, agreement or transaction or the disposition or execution of any such account, agreement or transaction or in regard to any act of agency performed with respect to such account, agreement or transaction; or

(d) To bucket any order, or to fill any order by offset against the order or orders of any other person or without the prior consent of any person to become the buyer in respect to any selling order of such person, or become the seller in respect to any buying order of such person.

### § 30.10 Petitions for exemption.

Any person adversely affected by any requirement of this part may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that he should be exempt from such requirement. The Commission may, in its discretion, grant such an exemption if that person demonstrates to the Commission's satisfaction that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. The petition will be granted or denied on the basis of the papers filed. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

### § 30.11 Applicability of state law.

Pursuant to section 12(e)(2) of the Act, the provisions of any state law, including any rule or regulation thereunder, may be applicable to any person required to be registered under this part who solicits foreign futures and foreign options customers and who shall fail or refuse to obtain such registration, unless such person is exempt from such registration in accordance with the provisions of § 30.4, § 30.5 or § 30.10 of this part.



APPENDIX A TO PART 30—INTERPRETATIVE STATEMENT WITH RESPECT TO THE COMMISSION'S EXEMPTIVE AUTHORITY UNDER §30.10 OF ITS RULES

Part 30 of the Commission's regulations establishes the regulatory structure governing the offer and sale in the United States of futures and options contracts made or to be made on or subject to the rules of a foreign board of trade. Section 30.10 of these regulations provides that, upon petition, the Commission may exempt any person from any requirement of this part. Specifically, section 30.10 states:

Any person adversely affected by any requirement of this part may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that he should be exempt from such requirement. The Commission may, in its discretion, grant such an exemption if that person demonstrates to the Commission's satisfaction that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. The petition will be granted or denied on the basis of the papers filed. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

As the provisions of this section make clear, any person subject to regulation under part 30 may petition the Commission for an exemption. In adopting these regulations, however, the Commission noted in particular that persons located outside the United States that solicit or accept orders directly from United States customers for foreign futures or options transactions and that are subject to a comparable regulatory scheme in the country in which they are located may apply under section 30.10 for exemption from some or all of the requirements that would otherwise be applicable to such persons. This interpretative statement sets forth the elements that the Commission intends to evaluate in determining whether a particular regulatory program may be found to be comparable to the Commission's program.

The Commission wishes to emphasize, however, that this interpretative statement is not all inclusive, and that information with respect to other aspects of a particular regulatory program may be submitted by a petitioner or requested by the Commission. In this connection, the Commission would have broad discretion to determine that the policies of any program element generally are met, notwithstanding the fact that the offshore program does not contain an element identical to that of the Commission's regulatory program and conversely may assess how particular elements are in fact applied

by offshore authorities. Thus, for example, in order to find that a particular program is comparable, the regulations thereunder would have to be applicable to all United States customers, notwithstanding any exemptions that might otherwise be available to particular classes of customer located offshore. A petitioner, therefore, must set forth with particularity the factual basis for a finding of comparability and the reasons why such policies and purposes are met, notwithstanding differences of degree and kind in its regulatory program.

No exemptions of a general nature will be granted unless the persons to which the exemption is to be applied consent to submit to jurisdiction in the United States by designating an agent for service of process pursuant to the provisions of rule 30.5 with respect to any activities of such persons otherwise subject to regulation under this part and to notify the National Futures Association of the commencement or termination of business in the United States. In this connection, to be exempted, such person must further agree to respond to a request to confirm that it continues to do business in the United States.

Persons located outside the United States may seek an exemption on their own behalf or an exemption may be sought on a general basis through the governmental agency responsible for the implementation and enforcement of the regulatory program in question, or the self-regulatory organizations of which such persons are members. The appropriate petitioner is a matter of judgment and may be determined by the parties seeking the exemption. The Commission, however, notes that it will be able to address petitions more efficiently if they are filed by the governmental agency or self-regulatory organization responsible for the regulatory program.

In this connection, as will be discussed in more detail below, any exemption of a general nature based on comparability will be conditioned upon appropriate information sharing arrangements between the Commission and the relevant governmental agency and/or self-regulatory organization. Representations from the appropriate governmental agency with respect to the applicability of any blocking statutes that may prevent the sharing of information requested under private arrangements would also be considered. Finally, in considering an exemption request, the Commission will take into account the extent to which United States persons or contracts regulated by the Commission are permitted to engage in futures-related activities or be offered in the country from which an exemption is sought.

In the Commission's review, the minimum elements of a comparable regulatory program would include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through which customer orders are solicited and accepted; (2) minimum financial requirements for those persons that accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) minimum sales practice standards, including disclosure of the risks of futures and options transactions and, in particular, the risk of transactions undertaken outside the jurisdiction of domestic law; and (6) compliance.

**Qualification.** Under domestic law, registration identifies to the Commission, the public and other governmental agencies the individuals and entities that are properly authorized to solicit and accept customer orders and are in good standing. Equally important, the procedure provides the Commission, through the National Futures Association, the opportunity to determine whether applicants are unfit to deal with the public. In this connection, the standards for determining whether a person through its principals is fit for registration with the Commission are set forth in section 8a(2)-8a(4) of the Act. Timely access to information as to a firm's good standing and the application by relevant authorities of membership and licensing criteria, as well as the criteria themselves, will be considered by the Commission in assessing comparability.

**Minimum Financial Requirements.** Minimum financial requirements for persons that handle customer funds serve at least three critical functions. First, they provide a cushion together with margin such that in the event of a default of a customer, the losses of that customer need not adversely affect the funds held on behalf of other customers. Second, they help ensure that the person has sufficient funds to operate its business and, therefore, is less likely to be tempted to misapply customer funds for its own purposes. Third, they ensure that the person holding customer funds has some financial stake in its business and, therefore, is serious in its intent. In assessing comparability, capital rules or their equivalent will be considered together with any provisions made for insuring customer losses, the scope of clearing guarantees and segregation or customer trust calculation and accounting requirements which, to the extent they cover undermargined accounts, can provide significant protection of one customer from another customer's losses.

**Customer Funds.** The Act requires the strict segregation of customer funds from those of the person holding such funds. One of the primary purposes of this requirement is to prevent the misapplication of those funds for purposes other than those intended by the

customer, which may affect not only the customer but the market as a whole. The purpose of segregation is also to identify customer deposits as assets of the customer, rather than the firm, in order that in bankruptcy such funds are payable only to satisfy the carrying firm's obligations to such customers and not other obligations of the firm. In assessing comparability of protection of customer funds, the Commission will consider protections accorded customer funds in a bankruptcy under applicable law, as well as protection from fraud.

**Recordkeeping and Reporting.** Recordkeeping requirements have long been recognized as the linchpin of the Commission's regulatory scheme. Reporting and recordkeeping requirements assist in determining that a registrant is acting in accordance with the provisions of the Act and the rules, regulations and orders of the Commission thereunder. Similarly, reporting requirements ensure that customers are timely advised of the transactions that have been executed on their behalf, thus ensuring that they are aware of their positions in the markets and may object to any transactions that they believe are in error. The Commission will consider the types of records maintained, the ability through those records to trace funds and transactions, and the period of retention and accessibility of records under the information sharing arrangements discussed below in considering comparability.

**Sales Practice Standards.** In 1982, Congress reaffirmed the importance of minimum sales practice standards to protect customers from fraud or misrepresentation by requiring any futures association registered by the Commission to adopt and enforce rules governing the sales practices of its members. The Commission has consistently provided that written disclosure of the risks of futures and options trading is essential to ensure that potential customers are aware of these risks and are not otherwise misled and that other appropriate disclosure is made. The Commission will review the type and manner of disclosure given and the mechanisms for assuring the disclosure requirements are met and, in particular, the treatment of discretionary accounts for which, for example, Commission rule 166.2 requires particularized documentation of intent to confer discretion in the case of foreign futures and options transactions.

**Compliance.** Finally, in assessing comparability of a program, the Commission will examine the procedures employed by the governmental authority or the appropriate self-regulatory organization to audit for compliance with, and to take action as appropriate against those persons that violate, the requirements of that program.

**Information Sharing.** As noted above, any exemption of a general nature would also require an information sharing arrangement

between the Commission and the appropriate governmental or self-regulatory organization to ensure Commission access to information on an as needed basis as may be necessary to fulfill its regulatory responsibilities. The information subject to these arrangements generally would be of a type necessary in the first instance to monitor domestic markets and to protect domestic customers trading on foreign markets.

Firm-specific information that is potentially relevant to protection of domestic customers engaged in foreign transactions could include the following: (1) Registration qualification status; (2) names of principals; (3) current capital; (4) location of customer funds; (5) address of main office and branches; (6) exchange and self-regulatory organization memberships; (7) the existence of any derogatory information such as that required to be disclosed on the Commission's Form 7-R; (8) notice of limitations imposed on activities; (9) notice of undersegregation or undercapitalization; (10) notice of misuse of customer funds; and (11) notice of sanctions or of expulsion from exchange or self-regulatory organization membership. The Commission believes that much of the above information would be public in the ordinary course in most jurisdictions. From time to time, the Commission also may need immediate access to financial information concerning risks posed to domestic firms by the carrying of foreign positions.

In addition to information that relates to the financial stability and creditworthiness of the firm, the Commission should have access to transaction-specific information that confirms the execution of orders and prices

and facilitates tracing of customer funds. Such data could include records reflecting: (1) That an order has been received by a firm on behalf of one or more United States customers; (2) that an order has been executed on an exchange on behalf of one or more United States customers; (3) that funds to margin, guarantee or secure United States customer transactions have been received by a firm and deposited in an appropriate depository; and (4) the price at which a transaction was executed and general access to pricing information.

Again, such information is likely to be maintained in the ordinary course of business. Tracing of customer funds would be most essential in cases of insolvency where repatriation of funds is at issue.

The Commission may also seek relevant position data information, including the identity of the position holder and related positions, in connection with surveillance of a potential "market disruption." This is particularly true in the case of integrated markets.

The Commission wishes to emphasize that the information sharing arrangements discussed herein are not necessarily a substitute for, nor would they preclude, a more formal agreement or arrangement with respect to the sharing of information.

*Marketing Activities by Firms Granted Rule 30.10 Relief*

FR date and citation: November 3, 1992, 57 FR 49644; August 17, 1994, 59 FR 42158.

[52 FR 28998, Aug. 5, 1987, as amended at 59 FR 42158, Aug. 17, 1994]

APPENDIX B TO PART 30—OPTION CONTRACTS PERMITTED TO BE OFFERED OR SOLD IN THE U.S. PURSUANT TO § 30.3(A)

Exchange	Type of contract	FR date and citation
International Petroleum Exchange of London .....	Options on Brent crude oil, and gas oil .....	December 6, 1989; 54 FR 50363.
London Futures and Options Exchange .....	MGMI .....	July 11, 1990; 55 FR 28373.
London Futures and Options Exchange .....	Option Contract on European washed Arabica coffee futures contract.	February 15, 1991; 56 FR 6262.
London Futures and Options Exchange .....	Option Contract on Robusta coffee futures contract	Dec. 6, 1989; 54 FR 50356. Feb. 27, 1991; 56 FR 8113.
London International Financial Futures and Options Exchange.	Option contract on three-month Eurodeutsche mark interest rate futures contract.	March 5, 1990; 55 FR 7706.
London International Financial Futures and Options Exchange.	Option contract on Italian Government bond futures contract.	January 14, 1992; 57 FR 1375.
London Int'l Financial Futures and Options Exchange	Options on Long Gilt, U.S. Treasury Bond, German Government Bond, 3-month Sterling Interest Rate and 3-Month Eurodollar Interest Rate contracts and on Sterling Currency and Dollar-Mark Currency.	September 12, 1989; 54 FR 37644.
London International Financial Futures and Options Exchange.	Option Contract on Three-Month Euro Swiss Franc ("Euroswiss") Interest Rate Futures Contract.	September 4, 1992; 57 FR 40604.

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Exchange	Type of contract	FR date and citation
London International Financial Futures and Options Exchange.	Option Contract on Three-Month Eurolira ("Eurolira") Interest Rate Futures Contract.	1996; 60 FR 19494
London Metal Exchange .....	Option Contracts on High Grade Primary Aluminum, Copper-Grade A, Special High Grade Zinc, Standard Lead, Primary Nickel and Tin futures contracts.	August 25, 1992; 57 FR 38439.
London Metal Exchange .....	Options on the LME Aluminum Alloy Future Contract.	December 5, 1994, 59 FR 62316.
Marche a Terme International de France .....	Option Contracts on Notional Bond, 3-month PIBOR and 3-month EURODEM Futures Contracts.	December 23, 1991; 56 FR 66346.
Marche a Terme International de France .....	Option Contract on the Long Term ECU Bond Futures.	April 1, 1992; 57 FR 10988.
Marche a Terme International de France .....	Option Contracts on United States Dollar/Deutsche Mark and United States Dollar/French Franc.	May 4, 1994; 59 FR 22972.
Marche a Terme International de France .....	Option Contracts on Great Britain Pound and the Deutsche Mark (GBP/DEM) and the Deutsche Mark and Italian Lira (DEM/ITL).	July 3, 1995; 60 FR 34459
Marche a Terme International de France .....	Option Contracts on the Deutsche Mark and the French Franc (DEM/FRF).	December 19, 1995; 60 FR 65237
MEFF Renta Fija .....	Options on the: Mibor'90, 3-Year and monthly and quarterly 10-Year Spanish Government Bond futures contracts.	June 9, 1995, 60 FR 30466
MEFF Sociedad Rectora de Productos Financieros Derivados de Renta Fija, S.A.	Option Contracts on the MIBOR '90 Plus Futures Contract.	August 14, 1995; 60 FR 41803
Montreal Exchange .....	International Options Clearing Corporation foreign currency options (British pounds, Deutschmarks, Japanese yen, Swiss francs), Canadian dollar, gold, and platinum options.	July 29, 1988; 53 FR 28848.
Montreal Exchange .....	Option Contract on Government of Canada Bond Futures Contract.	January 29, 1991; 56 FR 3208.
Montreal Exchange .....	Option on the 3-month Canadian Bankers' Acceptance Futures Contract..	March 4, 1994; 59 FR 10282
Singapore International Monetary Exchange Limited	Option contract on three month Euroyen interest rate futures contract.	June 28, 1990; 55 FR 26429.
Singapore International Monetary Exchange Limited	Options on the Nikkei Stock Average Futures Contract.	January 17, 1992; 57 FR 2676.
Singapore International Monetary Exchange (SIMEX)	Options on Eurodollar, Japanese yen, and Deutschmark futures.	July 29, 1988; 53 FR 28832.
Singapore International Monetary Exchange Limited	Option Contracts on the Long-Term Japanese Government Bond Futures Contract.	May 26, 1994, 59 FR 27234.
Singapore International Monetary Exchange Limited	Option Contracts on the Nikkei 300 Stock Index Futures Contract.	1996; 61 FR 1711
Sydney Futures Exchange .....	Options on 90-day Bank Accepted Bill futures, Ten-year Treasury bond futures, Australian dollar futures.	July 29, 1988; 53 FR 28840.
Sydney Futures Exchange .....	Options on Three-Year Australian Treasury Bond Futures Contracts.	August 15, 1988; 53 FR 30673.
Sydney Futures Exchange .....	Options on All-Ordinaries Share Price Index futures contract.	October 15, 1991; 56 FR 51650.
Sydney Futures Exchange .....	Overnight Options on 10-Year Treasury Bond, 3-Year Treasury Bond, and the All-Ordinaries Share Price Index futures contract.	January 13, 1994; 59 FR 1917.
Tokyo Grain Exchange .....	Option contracts on the TGE U.S. Soybean futures contract.	February 23, 1993; 58 FR 10957.
Tokyo Grain Exchange .....	Option Contract on the Raw Sugar Futures Contract	1996; 61 FR 2718

[53 FR 28832, July 29, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting appendix B of part 30, see the List of Sections Affected in the Finding Aids section of this volume.

## Pt. 30, App. C

### APPENDIX C TO PART 30—FOREIGN PETITIONERS GRANTED RELIEF FROM THE APPLICATION OF CERTAIN OF THE PART 30 RULES PURSUANT TO §30.10

Firms designated by the Sydney Futures Exchange Limited.

FR date and citation: November 7, 1988, 53 FR 44856.

FR date and citation: April 13, 1993, 58 FR 19210.

FR date and citation: March 7, 1997, 62 FR 10447.

Firms designated by the Singapore International Monetary Exchange Limited.

FR date and citation: January 10, 1989, 54 FR 809.

FR date and citation: September 16, 1999, 64 FR 50251.

Firms designated by the Montreal Exchange.

FR date and citation: March 17, 1989, 54 FR 11182.

FR date and citation: February 27, 1997, 62 FR 8877.

Firms designated by the Securities and Investments Board.

FR date and citation: May 19, 1989, 54 FR 21604.

Firms designated by the Association of Futures Brokers and Dealers.

FR date and citation: May 19, 1989, 54 FR 21609; April 5, 1991, 56 FR 14019.

FR date and citation: March 7, 1997, 62 FR 10449.

Firms designated by The Securities Association.

FR date and citation: May 19, 1989, 54 FR 21614; April 5, 1991, 56 FR 14019.

FR date and citation: March 7, 1997, 62 FR 10449.

Firms designated by the Investment Management Regulatory Organisation.

FR date and citation: May 19, 1989, 54 FR 21618.

FR date and citation: March 7, 1997, 62 FR 10450.

Firms designated by the Toronto Futures Exchange.

FR date and citation: March 22, 1990, 55 FR 10614.

Authorized Persons as designated in Annex E to the Mutual Recognition Memorandum of Understanding

FR date and citation: June 13, 1990, 55 FR 2390; December 23, 1991, 56 FR 66345.

Firms designated by the Tokyo Grain Exchange.

FR date and citation: February 23, 1993, 58 FR 10957; May 2, 1994, 59 FR 22506.

Firms designated by the MEFF Sociedad Rectora de Productos Financieros Derivados de Renta Fija ("MEFF Renta Fija").

FR date and citation: June 9, 1995, 60 FR 30466.

Firms designated by the New Zealand Futures and Options Exchange ("NZFOE").

FR date and citation: December 10, 1996, 61 FR 64989.

Firms designated by the MEFF Sociedad Rectora de Productos Financieros Derivados de Renta Variable ("MEFF Renta Variable.")

FR date and citation: April 8, 1997, 62 FR 16690.

[54 FR 809, Jan. 10, 1989, as amended at 54 FR 11182, Mar. 17, 1989; 54 FR 21604, 21609, 21614, and 21618, May 19, 1989; 55 FR 10614, Mar. 22, 1990; 55 FR 23909, June 13, 1990; 56 FR 14019, Apr. 5, 1991; 56 FR 66345, Dec. 23, 1991; 58 FR 10957, Feb. 23, 1993; 58 FR 19210, Apr. 13, 1993; 59 FR 22506, May 2, 1994; 60 FR 30466, June 9, 1995; 61 FR 64989, Dec. 10, 1996; 62 FR 8877, Feb. 27, 1997; 62 FR 10447-10450, Mar. 7, 1997; 62 FR 16690, Apr. 8, 1997; 64 FR 50251, Sept. 16, 1999]

## PART 31—LEVERAGE TRANSACTIONS

Sec.

31.1-31.2 [Reserved]

31.3 Fraud in connection with certain transactions in silver or gold bullion or bulk coins, or other commodities.

31.4 Definitions.

31.5 Unlawful conduct.

31.6 Registration of leverage commodities.

31.7 Maintenance of minimum financial, cover and segregation requirements by leverage transaction merchants.

31.8 Cover of leverage contracts.

31.9 Minimum financial requirements.

31.10 Repurchase and resale of leverage contracts by leverage transaction merchants.

31.11 Disclosure.

31.12 Segregation.

31.13 Financial reports of leverage transaction merchants.

31.14 Recordkeeping.

31.15 Reporting to leverage customers.

31.16 Monthly reporting requirements.

31.17 Records of leverage transactions.

31.18 Margin calls.

31.19 Unlawful representations.

31.20 Prohibition of guarantees against loss.

31.21 Leverage contracts entered into prior to April 13, 1984; subsequent transactions.

31.22 Prohibited trading in leverage contracts.

31.23 Limited right to rescind first leverage contract.

31.24 [Reserved]

31.25 Bid and ask prices; carrying charges.

31.26 Quarterly reporting requirement.

31.27 Registered futures association membership.

31.28 Self-regulatory organization adoption and surveillance of minimum financial, cover, segregation and sales practice requirements.